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OFFICE OF
GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

Re: Response of Red, White and Blue Fund to MUR 6747

Dear Mr. Jordan,

This Response is submitted by the undersigned counsel on behalf of Red, White and Blue Fund, in response to the Complaint designated as Matter Under Review 6747. Red, White and Blue Fund (the "Fund"), is an independent expenditure-only committee or "Super PAC" (FEC Committee ID C00503417) formed in October 2011. The Fund is not named as a respondent, nor does the Complaint allege that the Fund violated the Federal Election Campaign Act of 1971 or any other law.

According to the Complaint filed by the Campaign Legal Center and Democracy 21, Rick Santorum (then a candidate for President), "or some other person(s) associated with and acting as agents for Rick Santorum for President may have violated 2 U.S.C. § 441i(e)(1)(A) by directing a contribution exceeding \$5,000 from Mr. Bill Doré to" the Fund. The allegations are based entirely on a blog posting that appeared on the Sunlight Foundation's website.¹ This blog posting is of questionable reliability. First, the Sunlight Foundation is not a traditional news source or a source of "straight" news. Rather, it is an interest group that uses a blog as a means of advancing its agenda and point of view. Second, it is readily apparent that one of the two Complainants was heavily involved in concocting the blog posting that serves as the sole source cited in the Complaint. Campaign Legal Center senior counsel Paul S. Ryan's legal analysis and commentary is featured prominently in the posting. Paul Ryan's views were not balanced in the

¹ See Keenan Steiner, The \$1 million dinner: When big donor Bill Dore meets Rick Santorum, Sunlight Foundation (July 1, 2013), <http://reporting.sunlightfoundation.com/2013/1-million-dinner-when-big-donor-bill-dore-meets-rick-santorum/>.

blog piece by the views of any other campaign finance attorney or commentator not paid by a left-wing interest group.

The blog posting very clearly concludes that "there is nothing illegal in Doré's account," and Paul Ryan's direct quotations indicate agreement with this sentiment. (He was presumably the source of this conclusion as the blog piece's author is not an attorney.) This conclusion then leads to the familiar reform industry talking points about "how ridiculous current law is" because it does not adequately restrict "interaction . . . between deep-pocketed donors and candidates themselves." It appears then that at least one of the Complainants previously concluded that "nothing illegal" occurred. Nevertheless, the Campaign Legal Center and the Democracy 21 filed this Complaint, which was accompanied by identically titled, duplicative press releases that include statements from Paul Ryan and Fred Wertheimer that appear to directly contradict the earlier conclusions offered in the blog posting.²

Regardless of the Complainants' contradictory statements about the matter, the violation alleged in the Complaint ultimately depends upon the application of 2 U.S.C. § 441i(e) and corresponding Commission regulations to interactions that may (or may not) have occurred between the Santorum campaign and Mr. Doré. The Fund has no knowledge of any interactions between Rick Santorum, Santorum campaign representatives, and Mr. Doré.³ Nick Ryan, founder of Red, White and Blue Fund, affirms by affidavit that neither he nor any other representative of the Fund had any conversations or interactions with the Santorum campaign

² The blog posting concludes that "there is nothing illegal in Doré's account," and "Campaign Legal Center senior counsel Paul S. Ryan said it 'illustrates perfectly how ridiculous current law is and how much interaction current law accommodates between deep-pocketed donors and candidates themselves.'"

The Campaign Legal Center's press release, however, attributes the following quote to Paul Ryan: "Mr. Doré's account of his interaction with Mr. Santorum and his staff, if true, reveals a clear violation of federal campaign finance law." See Campaign Legal Center Press Release, "Watchdogs File FEC Complaint Against Santorum Campaign for Illegally Directing Super PAC Contributions" (Aug. 14, 2013), http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=2217:august-14-2013-watchdogs-file-fec-complaint-against-santorum-campaign-for-illegally-directing-super-pac-contributions&catid=63:legal-center-press-releases&Itemid=61.

Democracy 21's press release attributes essentially the same quote to Fred Wertheimer: "If the statements of Bill Doré are correct and Rick Santorum or his aides directed Doré's \$1 million contribution to the Super PAC supporting Santorum's presidential campaign, this would be a clear violation of federal campaign finance law." See Democracy 21 Press Release, "Watchdogs File FEC Complaint Against Santorum Campaign for Illegally Directing Super PAC Contributions" (Aug. 14, 2013), <http://www.democracy21.org/inside-the-courts/press-releases-inside-the-courts/watchdogs-file-fec-complaint-against-santorum-campaign-for-illegally-directing-super-pac-contributions/>.

³ We note that the aforementioned blog piece features very few direct quotes from Mr. Doré, and the purported evidence that the Complainant cites consists almost entirely of the blog author's paraphrased version of what Mr. Doré supposedly said.

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regarding Mr. Doré's contribution to the Fund. *See attached* Affidavit of Nicholas Ryan at ¶ 6. At or about January 10, 2012, Nick Ryan received a voicemail message from Mr. Doré, and shortly thereafter, he and Mr. Doré spoke about the possibility of Mr. Doré making a contribution to the Fund. *Id.* at ¶¶ 2-3. Nick Ryan provided bank routing information to Mr. Doré, who subsequently made a contribution to the Fund. *Id.* at ¶ 4. Mr. Doré never indicated how he learned of or knew about the Fund, and Nick Ryan did not inquire. *Id.* at ¶ 5. Nick Ryan had no reason to believe or suspect that Mr. Doré's contribution to the Fund was anything but entirely permissible and lawful. *Id.* at ¶ 7.

While we do not consider the blog posting or the Complainants to be credible, even if we assume solely for the sake of argument that the allegations made in the Complaint are correct, Mr. Doré's contribution to the Fund was still permissible under the Act and Commission regulations. 2 U.S.C. § 441i(e) regulates only the conduct of federal candidates, officeholders, and their agents, and does not impose any restrictions or obligations on donors. Accordingly, regardless of the truth or falsity of the allegations made in the Complaint, Mr. Doré made, and the Fund accepted, a lawful contribution that did not exceed any applicable amount limitation or source prohibition, and which was properly reported to the Commission.

We hereby request that if Red, White and Blue Fund is treated by the Commission as a Respondent in this matter that the Fund be notified of that treatment and informed of the grounds for that treatment. If the Fund receives such notification and information, we would like the opportunity to submit additional materials that respond directly to any allegations of wrongdoing by the Fund.

Sincerely,



Jason Torchinsky

Michael Bayes

Lauren Battey

Counsel for Red, White and Blue Fund

Attachment